

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

IRON WORKERS ST. LOUIS DISTRICT)
COUNCIL ANNUITY TRUST, et al.,)
)
Plaintiffs,)
)
vs.) Case No. 4:07CV1960 AGF
)
DKW CONSTRUCTION, INC.,)
)
Defendant.)

MEMORANDUM AND ORDER

This matter is before the Court on Plaintiffs' motion for final default judgment against Defendant DKW Construction, Inc.¹ Plaintiffs filed this action on November 21, 2007, under the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §§ 1132 & 1145; and the Labor Management Relations Act (LMRA), 29 U.S.C. § 185. Plaintiffs are three employee benefit funds (Annuity Trust, Pension Fund, and Welfare Plan) for the Iron Workers St. Louis District Council ("Plaintiff Funds"); and Local No. 396 and Local No. 392, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, AFL-CIO.

The complaint alleges that Defendant failed to make the periodic contributions to the Plaintiff Funds required of it under the Collective Bargaining Agreements ("CBAs") between Defendant and its employees' unions. The complaint further asserts that in addition to the payments due, Defendant is liable for interest on the delinquent payments;

¹ The parties have consented to the exercise of authority by the undersigned United States Magistrate Judge under 28 U.S.C. § 636(c).

liquidated damages in the amount of ten percent (10%) of the delinquency; attorney's fees; and court costs.

The complaint alleges, in a separate count, that Defendant also failed to make the monthly payments to Plaintiffs required by the Complete Reciprocal Release and Settlement Agreement between the parties, and is liable for these payments and related interest, attorney's fees, and costs. The Settlement Agreement resolved a prior dispute between the parties filed on October 17, 2003, styled Iron Workers St. Louis District Council Annuity Trust, et al. v. DKW Construction, Inc., No. 4:03-cv-01497 JCH.

On January 22, 2008, Defendant answered the complaint. Thereafter, Defendant's answer was stricken for failure of defense counsel to appear for a Rule 16 conference on two separate occasions, and for failure to show cause for missing these conferences. The Court thereafter entered a Show Cause Order, which was also sent directly to Defendant DKW Construction, Inc. at the last address shown for it in the Court file. [Doc. #13] On August 14, 2008, following Defendant's failure to respond to the Order to Show Cause why default should not be entered against it, the Clerk of Court entered default against Defendant.

By Order dated February 4, 2009, the Court granted Plaintiffs' motion for partial default judgment, and ordered Defendant to pay Plaintiffs (1) \$80,781.46 in contributions due to the Plaintiff Funds for the period of January 1, 2005, through March 6, 2008, plus interest on such contributions in the amount of \$8,446.05, plus liquidated damages in the amount of \$8,078.14; (2) \$4,605.33 in contributions due to Local No. 396, plus interest in the amount of \$697.67; (3) \$13,673.85 for breach of the settlement agreement between the parties, plus interest of \$3,281.72; and (4) costs of \$350.00, plus attorney's fees in the amount of \$14,211.00. These amounts totaled \$134,125.22. The Court also ordered

Defendant to submit to an audit. A copy of the Court's Order was sent directly to Defendant.

In the present motion, Plaintiffs seek a Final Default Judgment in the total amount of \$148,624.99, which includes the \$134,125.22 covered by the Partial Default Judgment, plus \$14,499.77, which the new audit showed is due the two Locals in delinquent contributions, interest, and liquidated damages for the months of March 2008 through March 2009. Plaintiffs have filed documentation supporting these new amounts. Defendant has not responded to the motion in the time permitted for a response.

Upon review of the record,

IT IS HEREBY ORDERED that Plaintiffs' Motion for Final Default Judgment is **GRANTED**. [Doc. #25]

An appropriate Final Default Judgment showing Defendant's liability of \$148,624.99, which includes the \$134,125.22 covered by the Partial Default Judgment, plus \$14,499.77, shall accompany this Memorandum and Order.

A separate Final Default Judgment shall accompany this Memorandum and Order.


AUDREY G. FLEISSIG
UNITED STATES MAGISTRATE JUDGE

Dated this 21st day of October, 2009.